

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

OFFICE OF COMPLIANCE AND INSPECTION

In Re: Aspen Aerogels, Inc.

File No.: AIR 13-02
AAD No.: 13-002-ARE

CONSENT AGREEMENT

A. INTENT & PURPOSE

This Agreement is entered by and between the Rhode Island Department of Environmental Management's Office of Compliance & Inspection ("RIDEM") and Aspen Aerogels Rhode Island, LLC, the successor in interest to Aspen Aerogels, Inc. This Agreement is entered in accordance with Section 42-17.1-2 *et seq.* of the Rhode Island General Laws ("R.I. Gen. Laws") for the purpose of resolving the administrative enforcement action set forth in that certain Notice of Violation ("NOV") issued to Aspen Aerogels, Inc. by RIDEM on 22 January 2013.

B. STIPULATED FACTS

- (1) WHEREAS, the subject facility is located at 3 Dexter Road in the city of East Providence, Rhode Island (the "Facility").
- (2) WHEREAS, on 22 January 2013, RIDEM issued the NOV to Aspen Aerogels, Inc. alleging certain violations of the Rhode Island's Clean Air Act and the RIDEM's *Air Pollution Control Regulations*.
- (3) WHEREAS, Aspen Aerogels, Inc. requested an administrative hearing to contest the NOV.
- (4) WHEREAS, after the NOV was issued, Aspen Aerogels, Inc. notified RIDEM that it had transferred operations of the Facility to Aspen Aerogels Rhode Island, LLC on 11 October, 2012.
- (5) WHEREAS, Aspen Aerogels, Inc. stated that it completed capital modifications to the heat treatment room on 31 May 2013.
- (6) WHEREAS, Aspen Aerogels, Inc. stated that it substantially completed the construction of a permanent total enclosure for Casting Table Line 2 on 28 June 2013.

- (7) WHEREAS, the execution of this Agreement is for settlement purposes only and does not and shall not constitute an admission by Aspen Aerogels Rhode Island, LLC or Aspen Aerogels, Inc. that the law or regulations have been violated as alleged in the NOV.
- (8) WHEREAS, in lieu of proceeding to an administrative adjudicatory hearing on the NOV and to effect a timely and amicable resolution of the NOV, RIDEM, Aspen Aerogels Rhode Island, LLC and Aspen Aerogels, Inc. hereby agree that it is in the best interest of the parties and in the public interest to resolve the issues raised in the NOV.
- (9) WHEREAS, RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with the Rhode Island's Clean Air Act and the RIDEM's *Air Pollution Control Regulations*.

C. AGREEMENT

- (1) JURISDICTION – RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over Aspen Aerogels Rhode Island, LLC and Aspen Aerogels, Inc.
- (2) FORCE and EFFECT – This Agreement shall have the full force and effect of a final compliance order issued after a full hearing on the merits pursuant to the Administrative Procedures Act, R.I. Gen. Laws Section 42-35-1 et seq. from which no timely appeal was taken, and which is enforceable in Superior Court in accordance with R.I. Gen. Laws Section 42-17.1-2(21)(v).
- (3) APPLICATION – The provisions of this Agreement shall apply to and be binding upon RIDEM, Aspen Aerogels Rhode Island, LLC and Aspen Aerogels, Inc. and their agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for Aspen Aerogels Rhode Island, LLC and Aspen Aerogels, Inc. in the performance of work relating to or impacting the requirements of this Agreement.
- (4) CONDITIONS –
 - (a) Aspen Aerogels Rhode Island, LLC shall complete the following actions to comply with the Order section of the NOV:
 - (i) On or before 31 January 2014, Aspen Aerogels Rhode Island, LLC shall substantially complete the construction of a permanent total enclosure for Casting Table Line 1.
 - (ii) On or before 31 March 2014, Aspen Aerogels Rhode Island, LLC shall complete air balancing for Casting Tables Lines 1 and 2.
 - (iii) On or before 31 March 2014, Aspen Aerogels Rhode Island, LLC shall demonstrate that each enclosure of Casting Table Lines 1 and 2 at the Facility meets the criteria for a permanent total enclosure contained in the Code of Federal Regulations 40 CFR Part 51, Appendix M, Method 204 – “*Criteria For and Verification of a Permanent or Temporary Total Enclosure*”. The results of

this demonstration shall be submitted to the RIDEM's Office of Air Resources no later than thirty (30) days after 31 March, 2014.

(b) Penalty – Aspen Aerogels Rhode Island, LLC shall pay to RIDEM the sum of **Seven Thousand Five Hundred Dollars (\$7,500.00)** in administrative penalties assessed as follows:

(i) Within thirty (30) days of execution of this Agreement Aspen Aerogels Rhode Island, LLC shall pay to RIDEM the sum of **Seven Thousand Five Hundred Dollars (\$ 7,500.00)**.

(ii) Penalties that Aspen Aerogels Rhode Island, LLC agrees to pay in this Agreement are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.

(iii) All penalty payments shall be in the form of a certified check, cashiers check, or money order, payable to the ***R.I. General Treasurer – Water and Air Protection Account***. All payments shall be delivered to:

Chief, RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767

D. COMPLIANCE

(1) EFFECT OF COMPLIANCE – Compliance with and fulfillment of this Agreement shall be deemed to resolve all issues raised in the NOV and shall constitute a dismissal with prejudice of the NOV.

(2) FAILURE TO COMPLY – In the event that Aspen Aerogels Rhode Island, LLC fails to comply with any of the items specified in Section C (4) (a) of the Agreement, Aspen Aerogels Rhode Island, LLC shall pay a stipulated penalty of One Thousand Dollars (\$1,000.00) per month for each and every month during which the noncompliance continues, except that RIDEM may, for good cause shown, defer or reduce such penalty. The payment of a penalty in accordance with this section shall not preclude RIDEM from seeking any other appropriate remedy (e.g., injunctive relief in Superior Court).

(3) COMPLIANCE WITH OTHER APPLICABLE LAWS – Compliance with the terms of this Agreement does not relieve Aspen Aerogels Rhode Island, LLC and Aspen Aerogels, Inc. of any obligation to comply with any other applicable laws or regulations administered by, through or for RIDEM or any other governmental entity.

(4) ADDITIONAL ENFORCEMENT ACTIONS – Upon a determination by the Director that there is a threat to the public health or the environment, or upon discovery of any new information, RIDEM reserves the right to take additional enforcement actions as provided by law or regulation, including, but not limited to, the issuance of “Immediate Compliance Orders” as authorized by R.I. Gen. Laws Section 42-17.1-2(21). This Agreement shall not restrict any right to hearing or other right available by statute or

regulation that Aspen Aerogels Rhode Island, LLC and Aspen Aerogels, Inc. may have regarding any new enforcement action commenced by RIDEM after the execution of this Agreement.

- (5) FUTURE ACTIVITIES AND UNKNOWN CONDITIONS – This Agreement shall not operate to shield Aspen Aerogels Rhode Island, LLC and Aspen Aerogels, Inc. from liability arising from future activities, as of the date of execution of this Agreement.
- (6) SCOPE OF THE AGREEMENT – The scope of the Agreement is limited to those violations alleged in the NOV.
- (7) NOTICE AND COMMUNICATION – Communications regarding this Agreement shall be directed to:

Christopher John, Supervising Air Quality Specialist

RIDEM Office of Compliance and Inspection

235 Promenade Street

Providence, RI 02908-5767

(401) 222-1360

Marisa Desautel, Esquire

RIDEM Office of Legal Services

235 Promenade Street

Providence, RI 02908-5767

(401) 222-6607

Richard Sherman, Esquire

Edwards Wildman Palmer LLP

2800 Financial Plaza

Providence, RI 02903

(401) 276-6513

- (a) At any time prior to full compliance with the terms of this Agreement, Aspen Aerogels Rhode Island, LLC and Aspen Aerogels, Inc. agrees to notify RIDEM in writing of any change in ownership of the Facility, and provide the name and address of the new owner(s). Notice of any change in address/telephone/fax of either party shall be sent to all other parties by certified mail.
 - (b) All communications regarding compliance with this Agreement shall be forwarded to the above-referenced addressees by certified mail.
- (8) DEFERRAL – The Director may, for good cause shown, defer any of the compliance dates prescribed herein. Good cause for deferral of any compliance date shall be forwarded to RIDEM in writing at least fifteen (15) days prior to the prescribed deadline.
 - (9) AMENDMENT – The Agreement may be amended by mutual agreement of the parties in writing.

(10) EFFECTIVE DATE – This Agreement shall be deemed entered as of the date of execution by all parties.

IN WITNESS WHEREOF, the undersigned consent to this Agreement in substance and in form.

For Aspen Aerogels, Inc.

By: _____ (Print Name)

Its: _____ (Title)

Dated: _____

In my capacity as _____ of Aspen Aerogels, Inc., I hereby aver that I am authorized to enter into this Agreement and thereby bind Aspen Aerogels, Inc. to satisfy any obligation imposed upon it pursuant to said Agreement.

STATE OF RHODE ISLAND
COUNTY OF _____

In _____, in said County and State, on this _____ day of _____, 20____, before me personally appeared _____, the _____ of Aspen Aerogels, Inc., a Delaware corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of Aspen Aerogels, Inc., and he/she acknowledged said instrument by him/her executed, to be his/her/ free act and deed in said capacity and the free act and deed of Aspen Aerogels, Inc.

Notary Public
My Commission Expires: _____

For Aspen Aerogels Rhode Island, LLC

By: _____ (Print Name)

Its: _____ (Title)

Dated: _____

In my capacity as _____ of Aspen Aerogels Rhode Island, LLC, the above hereby avers that he is duly authorized to enter into this Agreement on behalf of and thereby bind Aspen Aerogels Rhode Island, LLC to perform and fulfill any obligation imposed upon it pursuant to said Agreement.

STATE OF RHODE ISLAND
COUNTY OF _____

In _____, in said County and State, on this _____ day of _____, 20____, before me personally appeared _____, the _____ of Aspen Aerogels Rhode Island, LLC, a Rhode Island limited liability company, to me known and known by me to be the party executing the foregoing instrument on behalf of Aspen Aerogels Rhode Island, LLC and he/she acknowledged said instrument by him/her executed, to be his/her/ free act and deed in said capacity and the free act and deed of Aspen Aerogels Rhode Island, LLC.

Notary Public
My Commission Expires: _____

For the State of Rhode Island Department of Environmental Management

David E. Chopy, Chief
Office of Compliance and Inspection

Dated: _____